IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

CRP.No. 1783 of 2000(I)

AGAINST THE ORDER DATED 29/10/1999 IN IA.6791/1999 IN OS.1533/1996 of II ADDL.M.C., ERNAKULAM

.....

REVN. PETITIONER: PLAINTIFF

CLARA, W/O. PAUL, CHAKKALACKAL HOUSE,
MULAVUKAD DESOM, MULAVUKAD VILLAGE.

BY ADV. SRI.V.PREMCHAND
SRI.V.TEKCHAND
SMT.MANISHA PREMCHAND

RESPONDENTS: DEFENDANTS

***1. MOHAAAMMEDKUTTY, CONTRACTOR,**
MARAYIPARAMBIL VEEDU,
MULAVUKAD NORTH, MULAVUKAD.

2. THRESSIA, W/O. SEBASTIAN, ARACKAL HOUSE,
MULAVUKAD VILLAGE, MULAVUKAD DESOM.

3. MERCY JACOB, D/O. LATE SEBASTIAN,
PALLIPARAMBU HOUSE,
CHERANALLORE 682 034.

4. BINNY PHILIP, S/O. LATE SEBASTIAN
ILLIPARAMBIL HOUSE, MOTHER THERESA ROAD,
BOAT JETTY, VADUTHALA.

5. SHINY JOY, D/O. LATE SEBASTIAN
ILLIPARAMBIL HOUSE, MOTHER THERESA ROAD,
BOAT JETTY, VADUTHALA.

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6. JOMY , S/O. LATE SEBASTIAN, ILLIPARAMBIL HOUSE, MOTHER THERESA ROAD, BOAT JETTY, VADUTHALA.

7. AMBILY TOMY, ILLIPARAMBIL HOUSE, MOTHER THERESA ROAD, BOAT JETTY, VADUTHALA.

(THE 5TH RESPONDENT IN THE IMPUGNED ORDER WAS DELETED FROM PARTY ARRAY BEFORE THE TRIAL COURT, AS PER ORDER DT. 7.6.99 IN IA. 1375/99. THE 7TH RESPONDENT DIED ON 26.5.2000 AND THE SEVENTH RESPONDENT HEREIN IS HIS WIFE)

*** THE IST RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DT. 21.11.07 IN IOA. 2884/07.**

BY ADV. SRI.M.M.SAIDU MUHAMMED SRI.N.F.JAMES

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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M.N. KRISHNAN, J.

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C.R.P. NO. 1783 OF 2000

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Dated this the 30th day of November, 2007.

O R D E R

This revision is preferred against the order of the 2nd Addl. Munsiff, Ernakulam in I.A.6791/99 in O.S.1533/96. The suit was one for declaration of easement over a pathway claimed by the plaintiff in the suit. The matter was settled between the parties. As per the terms of compromise a right was conferred upon the plaintiff and the members of his family to use the pathway to reach the road. It is incorporated as clause 2 of the compromise. Clause 3 is an agreement whereby when the plaintiff gets an alternate way he shall relinquish the right of easement over this way. Now, the learned counsel for the revision petitioner contends that the usage of the words, ...

.....

.....”

The objection is with respect to usage of words “.....

.....” The learned counsel contends that it will be

unlawful in the light of Section 24 of the Easements Act, 1882. A reading of S.24 would go to show that the dominant owner is entitled as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement, but such acts must be done at such time and in such manner etc. So the learned counsel would contend that there must be all necessary acts done to secure full enjoyment of the easement. According to him by the stipulations they cannot use the right claimed for any other purpose. There is restriction imposed which militates against S.24. I cannot agree with the submission of the learned counsel for the following reasons.

2. Even if a suit had been decreed on merits, the Court would have only declared that he is entitled to have a declaration of easement right of way over the property and nothing else. He cannot do any act he likes in that property. The Apex Court has always cautioned that easement right being a restricted right which curtails enjoyment of the property by the real owner. It has to be strictly interpreted and therefore the right given can be only the right claimed if

it satisfies all the ingredients contemplated under the provisions of the Easement Act. In this case the right of way has been a well preserved right and the only embargo is that it cannot be used for any other purpose. I think it is a clause which really conveys the real purport of Section 24 even. Therefore, I cannot agree with the learned counsel that it is a clause which is opposed to law.

3. So far as the 3rd clause is concerned, it is only some thing which may have to be considered at the stage when there comes another way. I leave it there. Therefore, though it is true it may not be correct to file an application under Order 6 Rule 17. This can be again gone into under the proviso to Order 23 Rule 3 (3) and therefore the Court has to consider when such an objection is raised and the petition can be considered as maintainable. But the petition lacks merit. Therefore the C.R.P. is dismissed on the above lines.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. No. 1783 OF 2000

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O R D E R

30th November, 2007.